

**Federal Communications Commission
Washington, D.C. 20554**

Petition of USTelecom for
Forbearance

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WC Docket No. 18-141

COMMENTS

NEW NETWORKS INSTITUTE & IRREGULATORS

We are requesting that USTelecom withdraw its Petition for Forbearance and then fixes the data provided.

August 6th, 2018

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Introduction

We are requesting that the USTelecom Petition for Forbearance and fix the data provided.

USTelecom, formerly the United States Telephone Association, USTA, filed a petition to remove any remaining ILEC-specific obligations for ‘interconnection’ that give the remaining competitors access to the state utility network infrastructure—and it includes the removal of many regulations and obligations--anything else they could think of getting rid of.

Unfortunately, when a non-profit trade association that represents ILECs, incumbent local exchange companies—AT&T, Verizon and CenturyLink— doesn’t mention that there are still state utilities, even though the ILEC’s are still America’s state-based utilities---and then presents basic data to confuse, twist and obfuscate basic facts—the forbearance petition fails the primary test – it does not represent the ‘public interest’ – and by definition as it is not in the public interest.

“Commission is required to forbear from any statutory provision or regulation if it determines that...(3) forbearance is consistent with the public interest.”

1) Deceptive Accounting of Access Lines: Dishonesty and a Lack of Ethical Behavior.

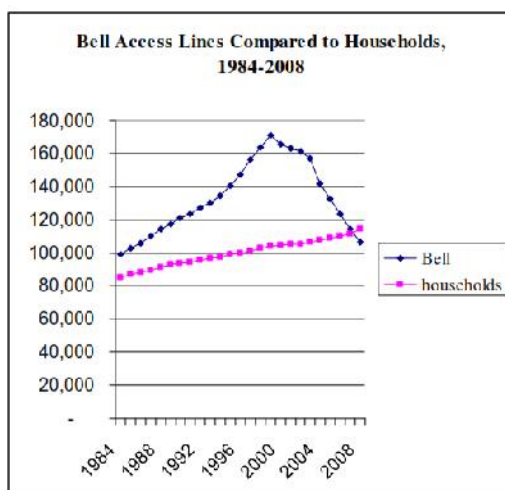
Let’s go through how deceptive and ugly the data being presented is.

“Since the adoption of these mandates, there has been a staggering decline in ILEC switched access voice subscriptions, from 186 million in 2000 to a projected 35 million this year. In residential markets, only 11 percent of U.S. households are projected to have an ILEC switched voice line by the end of this year.”

The irony of this moment should not be lost on the reader.

2) NOT VOICE SUBSCRIPTIONS: The “Peak” of Access Lines in 2000 was Caused by Dial-Up Internet Service—Over the Telephone Networks Offered by Independent ISPS.

Compare the quote which starts at the year 2000 with a full accounting of ILEC Access Lines since 1984.



3) The ramp-up to the 2000 peak was caused by “hypergrowth” of phone lines due Independent ISPs offering dial up Internet over the telephone networks.

Starting in 1992, with the beginnings of online services, like AOL and Prodigy, there was ‘hypergrowth’ of lines caused by the Internet and the growth of the small Internet Service Providers offering service and getting customers—on dial-up, using an existing copper phone line and a computer with a modem.

Bell Hypergrowth Internet and Fax Era, 1992-1999

	1992	1993	1994	1995	1996	1997	1998	1999
Access	2.75%	2.61%	3.27%	4.17%	4.85%	6.41%	4.39%	4.59%
Census	1.44%	0.79%	0.71%	1.94%	0.64%	1.40%	1.49%	1.31%
	91.4%	230.4%	363.6%	115.3%	653.4%	358.8%	193.6%	249.7%

The ramp up to the year 2000 shows 91%-654% increases in lines as compared to household growth, (using Census data). Historically, these two trend lines were tied together.

4) GAO in 2000: 88% of Internet users used a basic telephone access line.

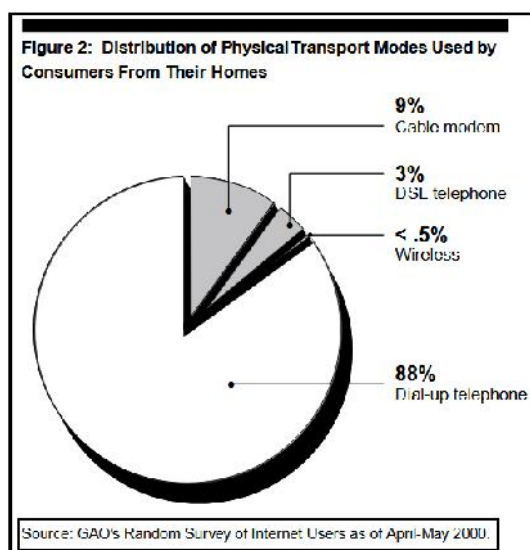
According to the “GAO-01-93 Consumer Choice of Internet Providers Technological and Regulatory Factors Affecting Consumer Choice of Internet Providers, October 2000”¹

“According to our random survey of Internet users, the conventional telephone line is the most common method of transport to the Internet, with about 88

¹ <https://www.gao.gov/new.items/d0193.pdf>

percent of respondents using conventional narrowband telephone transport. Twelve percent of the respondents have a broadband method of transport to the Internet—9 percent using cable modem service, and 3 percent using DSL telephone service.”

The GAO wrote a report in 2000 about how people got online from their homes. It wasn’t the big telcos or the cable companies. It was the independent Internet Service Providers—with 88% of the population using a TELEPHONE LINE.



5) Census: In 2000, 44 million households used the internet at home.

According to the Census Report, “Home Computers and Internet Use in the United States: August 2000”² 44 million households had at least one person in the house that used the internet at home, but the number had been steadily increasing from 18% in 1997 and 26% in 1998, (there was no 1999 report).

“More than 2 in 5 households have Internet access.

Forty-four million households, or 42 percent, had at least one member who used the Internet at home in 2000. This proportion was up from 26 percent in 1998, and more than double the proportion of households with Internet Access in 1997 (18 percent), the first year in which the Census Bureau Collected data on Internet use.”

Therefore;

- The year 2000 **did not have** 186 million ‘voice’ subscriptions as the access line growth were data lines.
- The accounting of lines is NOT residential but also business lines.

² <https://www.census.gov/prod/2001pubs/p23-207.pdf>

- The very ‘competitors’ that brought America the Internet and compete, as we will show have been persecuted by the continued bombardment of ridiculous forbearance requests and atrocious, deceptive data.

6) These are the basic phone lines of the State utility

What is really appalling is that the USTelecom wants to show a ‘loss of lines’ but only uses one class of lines, and only residential customers and declares them all to be voice lines.

Moreover, the ‘telephone lines’ quoted are ‘intrastate’ in classification and part of a state utility, commonly referred to as the PSTN, Public Switched Telephone Networks.

“In residential markets, only 11 percent of U.S. households are projected to have an ILEC switched voice line by the end of this year.”

Moreover, these lines are based on revenues from “Local Service”, not, say “Business Data Services” or “Nonregulated” lines. No. It only using the POTS lines, only voice POTS lines, only residential POTS lines—and never a mention that these are intrastate and part of the state utility!

There is an ethical failure here; a clear-cut attempt to use deceptive, twisted statistics to influence public policy for the trade association’s members – is not in the public interest.

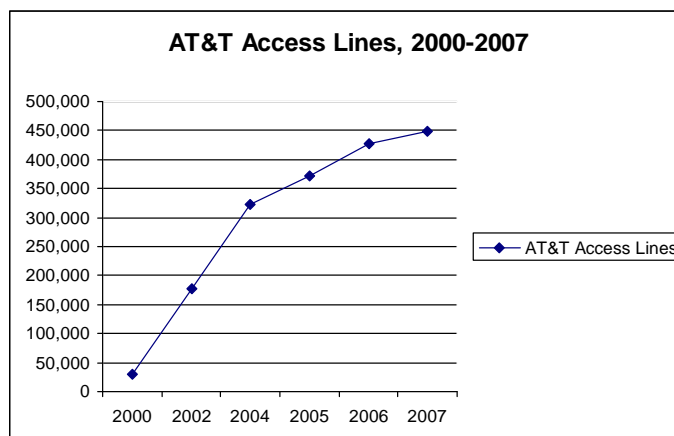
7) The USTelecom is Hiding the Majority of Access Line in America

First, according to AT&T, there was an increase of 1391% in lines from 2000-2007, and this chart shows what included both the data lines, previously called “Special Access” or “Business Data Services” lines.

AT&T’s Access Line Equivalents from 2000 through 2007

12/31/2000	12/31/2002	12/31/2004	3/31/2005	12/31/2005	12/31/2006	6/30/2007	increase
30,167	177,071	322,352	328,752	372,222	428,273	449,670	1391%

"Given the growing importance and magnitude of data revenue streams and circuit volumes, access line growth has become less than a comprehensive measure of strength in the market. The development of Voice Grade Equivalents (VGEs), which include data circuits, provides a consistent and quantifiable means for bridging the gap between access lines and data services."

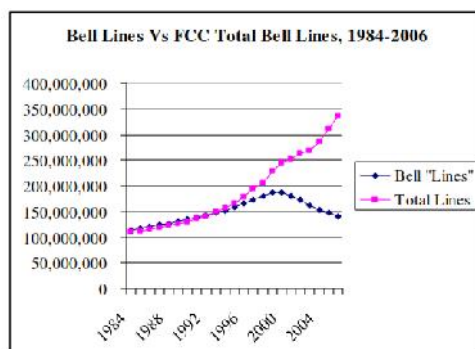


Where's the decline in lines? Is USTelecom calling AT&T a liar?

8) Misrepresentation: A Failure to Provide "Interstate" Lines.

This next chart is the access line accounting from the FCC through 2006, starting in 1984, and it shows that while there has been a drop in one class of service, the basic, copper wire POTS phonenumber, the actual lines were still in use and growing.

The fact is, the FCC, USTelecom and AT&T et al. have decided to manipulate the accounting of lines to show an artificial loss of lines.



Thus, from 1984 there was a steady increase in Access lines, but a shifting in the business so that the copper-based wires were reclassified by the traffic over the wire.

This has allowed the companies to directly manipulate public opinion as to the 'loss' of lines, as it uses the intrastate, basic, copper wired phone line, but stopped counting all of the access lines in service.

Bell Access Lines Vs FCC Bell “Total Lines”, 1984-2006

	1984	1990	1995	2000	2001	2005	2006	Since 2000	Overall
Access Lines	99.3	134.7	158.2	187.6	179.8	140.2	139.0	-25.4%	23%
Total Lines	103.1	130.4	166.0	244.8	252.7	311.5	337.1	37.7%	187%

9) The FCC’s Last Data Was 2007; Local Access Lines Were just 15% of Total Lines.

In fact, the last data published by the FCC shows just how large this shell game has grown. This is the Verizon New York 2007 Access Line accounting from the FCC and it supplies ALL of the access lines.

Verizon New York Access Lines, 2006-2007

	2007	2006
Switched Access Lines in Service:		
Main Access Lines	4,658,451	5,116,406
PBX & Centrex Trunks	460,379	463,709
Centrex Extensions	999,354	963,213
Other Switched Access Lines	1,064,404	1,417,158
Total Switched Access Lines	7,182,588	7,960,486
Central Office Switches Excluding Remote Switches	301	301
Remote Switches	300	299
Central Office Switches	601	600
Basic Rate ISDN Control Channels	62,486	67,019
Primary Rate ISDN Control Channels	14,952	14,442
Access Lines in Service by Customer:		
Business Switched Access Lines:		
Single Line	145,466	151,497
Multiline/Other Than Payphone	2,677,605	2,799,836
Payphone Lines	88,614	99,305
Residential Switched Access Lines:		
Lifeline	263,473	276,013
Non-Lifeline/Primary	3,584,790	4,137,632
Non-Lifeline - Non-Primary	422,640	496,203
Total Switched Access Lines	7,182,588	7,960,486
Special Access Lines (Non Switched):		
Analog (4kHz or Equiv)	25,765	27,279
Digital (64kbps or Equiv)	39,615,373	35,003,428
Total Access Lines (Switched and Special)	46,823,926	42,993,193
Local Private Lines	595,918	592,305

(FCC Statistics of Common Carriers, for the Year Ending December, 31, 2007)

And, isn't it surprising that the last data provided by the FCC about access lines and the state utility financials was terminated in 2007, around the same time that a wave of forbearance petitions came from AT&T, Verizon, CenturyLink – and the USTA?

10) Zero lines supplied by Verizon NY for \$3.5 Billion in Revenue, 2017

On May 31, 2018, the Verizon New York 2017 Annual Report was published. Actual fresh data from a state utility—how refreshing.

Using the previous Verizon NY annual reports, while the revenues from Special Access (Business Data Services) and nonregulated services show a massive increase, the report, like USTelecom, failed to provide an accounting of ALL lines in service.

Verizon NY's financial books for 2003-2017 show an increase of 103% of revenues for Business Data Services and Nonregulated had 604% increase. Local Service revenues were in steep decline.

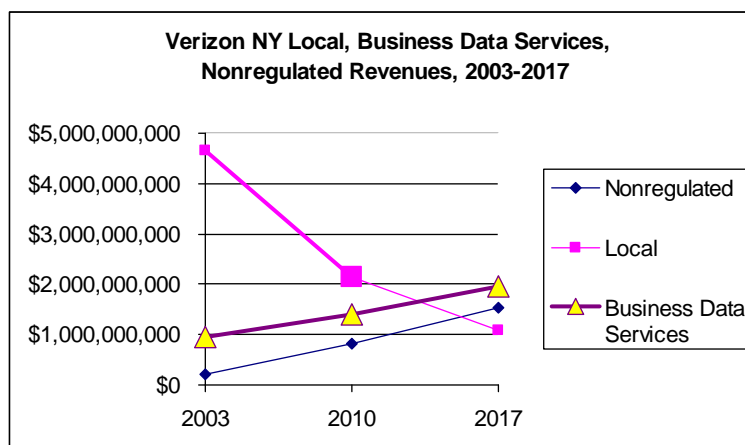
But, in 2017, there were 1,900,000 access lines and they were accounted for in the Local Service revenue category– with the average customer paying a whopping \$57.95 a month (counting the FCC Line Charge) for basic service of a state utility access line.

And while we address the issues of prices no longer being 'just and reasonable', The combined \$3.5 billion on special access revenues and nonregulated show ZERO LINES.

Verizon NY Local, Nonregulated and Business Data Service Revenues, 2003-2017

	2003	2010	2017	Change
Local	\$4,66,839,000	\$2,146,564,484	\$1,077,961,833	-77%
Business Data Services	\$961,782,996	\$1,414,000,000	\$1,953,542,082	103%
Nonregulated	\$219,748,000	\$817,676,239	\$1,546,034,819	604%
BDS and Nonregulated	\$1,181,530,996	\$2,231,676,239	\$3,499,576,901	196%

This chart shows that there has been a major drop in “Local Service”, which are the only lines being shown by the USTelecom. However, at the same time, there has been a massive increase in other revenue areas, including Business Data Services and Nonregulated services.



And this percentage of total revenues would suggest that while, in 2003, Local Service represented 80% of these three categories in revenues, by 2017 it is only 24% -- and thus we are missing access lines for 76% of the revenues.

Verizon NY Local, Nonregulated and Business Data Service Revenues, 2003-2017

	2003	2010	2017
Nonregulated	4%	19%	34%
Local Service	80%	49%	24%
Business Data Services	16%	32%	43%

11) The FCC Found \$40 Billion in Special Access 2013—60% Were Still “Usually Copper”.

Moreover, the FCC examined special access, of Verizon and AT&T, as incumbent phone companies.³ According to the FCC, 60% of this \$40 billion is for ‘mostly’ copper-based services that rely on the existing technology, commonly called “TDM”.

“TDM-based business data services... DS1 & DS3 transport are the dedicated **(usually copper) circuits** that many business and other institutional users continue to rely on for their data and other communications needs... Despite the growth of newer technologies, preliminary analysis of the Commission’s special access data collection shows that revenues from such TDM services continue to make up in the range of sixty percent of the roughly \$40 billion annual special access market.”

Let us be very clear. Verizon New York’s financial reports detail the special access revenues and expenses and so the previous details are embedded within this conclusion. However, the FCC failed to examine that this revenue and expenses are also embedded in Verizon New York as a state utility—a fact that the FCC – and USTelecom are trying to cover up.

12) Misrepresentation– How Many Business Data Service Lines are there in Service?

USTelecom just continues to be a slap in the face of a factual presentation with actual data. In this quote, where, exactly are the number of business data services?

There are no access lines supplied, at all. This is just hand waiving. This is not in the Public Interest to hide basic data.

“There is also intense competition in the business data services marketplace. As of 2013 (some five years ago now), competitive providers had deployed

³ http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1016/DA-15-1194A1.pdf

transport networks in the census blocks housing about 99 percent of business establishments, and the vast majority of locations exhibiting demand were within several hundred feet of competitive fiber.”

This is on top of the known distortions of quoting census block information or “several hundred feet of competitive fiber”.

13) There Are No Access Lines Supplied for Business Data Services at All.

And USTelecom provides more gobblygook. Here are lists of different types of access lines and ZERO actual lines in service.

“Although the discussion herein focuses on DSO, DS1, and DS3 loops and DS1/DS3 transport offerings, for the sake of clarity, this Petition also seeks relief from all unbundling obligations, including those associated with hybrid loops and subloops, and with elements that facilitate unbundling of core transmission elements, such as network interface devices ("NIDs"), databases, and operations support systems ("OSS"). Forbearance with respect to these elements is warranted by the same factors that render forbearance appropriate for loop and transport elements.”

Just to make sure that the USTelecom knows what we are stating:

- **Verizon New York, the only state utility that publishes a financial annual report anymore, showed \$3.5 billion in revenues for the year 2017 for the special access services and the nonregulated services. This includes the fiber to the home, the wires to Verizon Wireless, and Verizon Online, as well as the copper wired BDS services that are mentioned in the above quote from the FCC -- and are all classified as “Title II”.**
- **However, there are ZERO access lines, which is impossible.**

The USTelecom accounting of access lines is therefore manipulated to the point of being deceptive. It is not in the public interest, and unless the USTelecom amends their petition for accuracy, it should be denied or, henceforth, taken to court.

14) GAO Study: ‘Competition’ from 7000 ISPs Using Phone Lines in 2000.

The GAO study previously quoted discussed ‘competition’ using phone lines in the year 2000. They wrote:

⁶ 2013 USTelecom Forbearance Order, 28 FCC Red at 7650-51 ~ 41.

“Consumers’ choice of companies providing transport to the Internet over the telephone network has been facilitated by the design of the telephone infrastructure as well as by the common carrier regulation of these companies. For the same reasons, consumers using the telephone network for transport to the Internet have many ISPs from which to choose. On the cable network, consumers generally purchase both the transport and ISP functions from the cable provider and must subscribe to a second ISP if they want to obtain particular content or applications from an ISP not affiliated with their cable company”

“Although consumers’ choice of companies providing transport to the Internet is expected to increase, consumers’ choice of ISPs could simultaneously diminish in the next few years. At present, there are approximately 7,000 ISPs in the United States.”

“One study issued in 1998 found that 92 percent of American consumers had seven or more ISPs to choose from in their local areas.”

“In large degree, the considerable consumer choice in the ISP market is related to the fact that most consumers obtain physical transport to the Internet over the telephone network.”

15) The Fall of ISP Competition: The 2001 Republican Transition FCC and Eisenach

And of the Total Market? In 2001, ISP Planet, one of the leading research groups at the time, claimed that there were 77 million total subscriptions—and 54% of the entire US market was being handled by independent, small ISPs, not what is now AT&T et al.

America has Progress & Freedom Foundation, led by Jeff Eisenach, who was on the FCC transition team for Ajit Pai, as well as on the FCC Powell transition team. Starting in 2001-2002 the entire ISP and competitor market was now under serious attack. But, as I mentioned, this had been underway since the Act was passed.

The small ISPs [filed complaints](#) against now-Verizon starting in 1998-1999 because the incumbents were making sure that their phone lines weren’t installed in a timely manner or the lines would stop working or the discount pricing to the ISPs and CLECs to use these networks were higher than the retail pricing by then Bell Atlantic, now Verizon.

“The Department of Justice (DOJ) has recently found that Bell Atlantic (Verizon), New York has not been able to deliver an “acceptable level of performance” for the provision of competitor DSL (Digital Subscriber Line) services. In fact, the DOJ report found that 30 to 40% of all order confirmations

to the CLECs were inaccurate while over 80% of all orders required some form of manual processing.”

16) Small ISPs were Under Attack by 1999; then, the FCC Did Nothing.

What this says is - imagine having a business where at least 30-40% of the time the order didn't go through or had some problem, mostly fabricated. (This was the reason I had been sitting the room with the small ISP in 1996; their orders for lines were not going through and they wanted to know why.)

But, there were a myriad of problems, including predatory pricing by the incumbent.

“Bell Atlantic is Using Predatory Pricing for DSL that is Designed to Eliminate Internet Service Providers.

“NNI was asked to comment on Bell Atlantic's ADSL discount wholesale pricing to ISPs. It is a clear case of a monopoly using predatory pricing to eliminate competitors.

“Based on Bell Atlantic's ‘The ISP Term & Volume Program: Rates’, dated October 1999 (which is a rewrite of a previous pricing sheet), Bell Atlantic's pricing will clearly result in competitors never being able to compete against Bell Atlantic retail. In fact, these companies will lose massive amounts of money for every customer they sign up.”

And it would get worse. Under Powell, the FCC released six inter-related proceedings that were designed to kill off competition.

Patty Fusco, Managing Editor, ISP Planet, March 1, 2002

“We've been begging the FCC to establish a National Broadband Policy. On Feb. 14th the FCC took action-only it might turn out to be as bloody for ISPs as the St. Valentine's Day Massacre was for George ‘Bugs’ Moran's North Side Gang in Chicago, circa 1929.”

And this was an attack, led by Powell et al., against small businesses, using the Eisenach-Powell-et al. mantra of ‘intermodal competition’. Who needs actual competition?

In fact, the independent ISPs had consistently presented data to the FCC to defend their small businesses and it had fallen on deaf ears. The head of the Texas ISP Association, (TISPA) recounted his meeting with Chairman Powell and senior staffers at the FCC Enforcement Bureau.

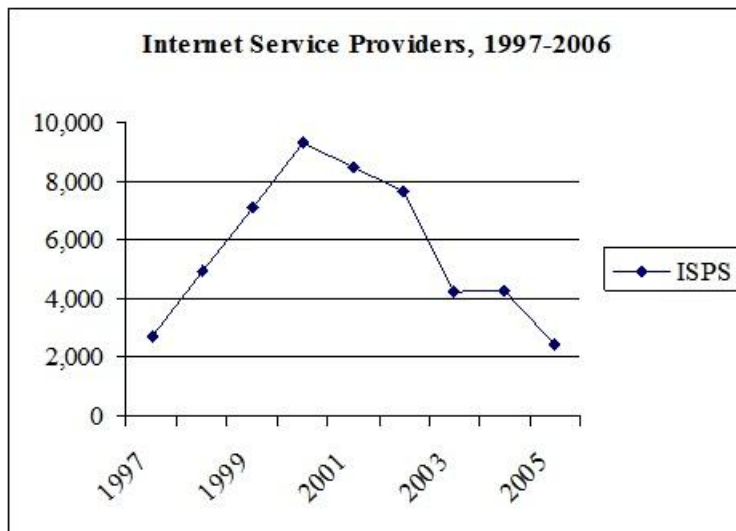
“The meeting was Tuesday May 8th, 2001. In a nutshell, all the “bad acts” submitted to them to date have resulted in exactly “ZERO” dollars in fines. We asked for something blatant as handwriting on a wall as to the future of the complaint process as we are approaching it. We got it. WE SHOULD EXPECT NOTHING FROM THE INFORMAL COMPLAINT PROCESS. We should expect nothing from any complaints we have submitted to date.

“A couple of weeks ago we met with a senior person in the ENFORCEMENT BUREAU. After a one-hour meeting and receiving some heartfelt empathy for the plight of ISPs and the consumers who are being victimized by the illegal, anti-competitive behavior, I suggested that our best move might be to just jump out a window. He suggested we might want to consider throwing a chair out of the window first, so we wouldn’t get cut on the glass as we jumped.”

17) Drop in Access Lines: By the End of 2005-2006, 7,000 Small ISPs Out of Business.

By the end of 2005-2006, 7,000 small ISPs had been put out of business. And while there are a host of caveats, the main attacks came, not from market forces, but from the FCC’s failure to enforce the existing laws, or they erased the laws on the books. In fact, the FCC had ‘re-regulated’ the CLECs and ISPs out of business. And surprise, surprise, guess who was able to simply walk in and take over their business? The phone and cable companies had a feast by taking over the market. Ironically, this was the FCC’s idea of ‘light touch’ regulation.

This is a chart representing the rise and fall of the Internet Service Providers that relied on using the networks to offer customer internet services.



Let us be clear and this is worth repeating: The Telecom Act of 1996 was the reregulation of the state utility wires to allow competition. The FCC's play post 2001 removed this reregulation, regardless of what the corporate-funded think tankers tell us.

And the sad outcome? Now, when someone mentions the term "ISP", they think of the incumbent phone and cable companies. To date, the FCC has never properly defended small business rights, especially the ISP and CLEC markets.

And now, this USTelecom has decided it needed to finish the job and get rid of the remaining competitors.

18) Killing Off Competitors has been the Goal, Not the Public Interest

This petition actually proves just how ugly this forbearance request and the previous pile has gone out of it's way to harm competition. First, the USTelecom admits that they killed off residential local competition – not through competition but through the capture of the FCC:

"In the residential marketplace, competition will not be materially affected by forbearance from Section 251 (c)(3) because there is effectively no remaining UNE-based competition in that marketplace. To the extent CLECs serve residential customers using ILEC facilities, they do so on commercial platforms. Under these circumstances, far from reducing competition, the elimination of unbundling requirements will only further intensify competition by encouraging even more facilities-based investment."

19) Footnote Lays Out the Plan: Shut Out of Competitors by Forbearance

And the footnote continues that lays out that it shut out competitors from using the customer funded, state utility fiber optic networks as well as Linesharing, the ability of one line to carry both DSL as well as voice service

"See *Triennial Review Order*, 18 FCC Red 16978 (removing obligations for broadband-related network elements such as greenfield fiber-to-the-home, packet switching, and line sharing mandates); *Triennial Review Remand Order*, 20 FCC Red 2533 (eliminating unbundled end office switching, noting competitors' ability to self-provision such facilities or acquire them elsewhere); *2015 USTelecom Forbearance Order*, 31 FCC Red at 6189 ~ 55 (forbearing from requiring ILECs that retired copper facilities after installing fiber-to-the-home facilities to offer competitors an unbundled 64 kbps voice-grade channel)."

20) Total Lie: Forbearance Raised Rates 100%; Harvesting Local Utility Customers.

This Petition goes on to just out and out lie to the public, claiming that these actions lowered rates.

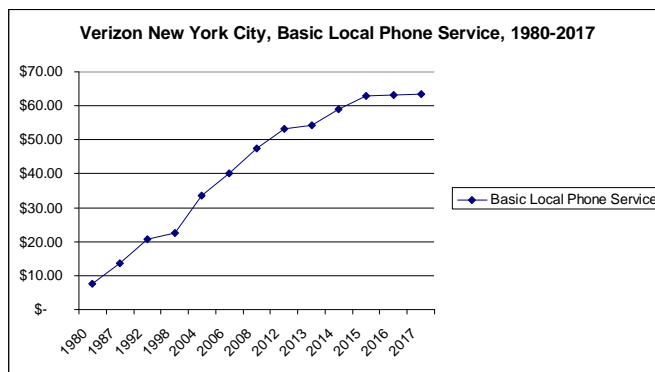
“Forbearance will “benefit consumers through lower rates and/or more vibrant competitive offerings and promote[] competition by providing a more level playing field because other providers of similar services are not subject to the rules.”⁶

Thanks to a killing off the competitors, there has been no competitive force. Since flurry of forbearance petitions that started in 2004-2009, the price of local service has gone up throughout America – and customers have been “harvested”. i.e., raising rate continually until the scream uncle and leave—which is the plan to force customers onto wireless—or get gouged.

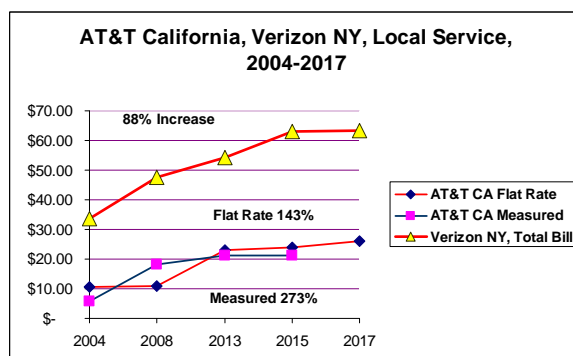
And according to the FCC, there are 35 million customers being gouged today.

21) Prices Never Declined. There Never Was Any Direct Competition—Customers Were Harvested.

Using a series of actual phone bills, it is clear that there is no competition as the price of basic local phone service from the state utility always went up. Prices are supposed to go down when there are competitors.



All of the other states we examined had rate increases, most of them of over 100% since 2006. This next chart shows the increases in New York for the total bill, taken from the previous exhibit (including taxes), as well as the increases that occurred in AT&T California, which is only using the ‘basic rate’. Since 2004, AT&T California local flat rate service went up 143% while the cost of measured service went up 273%– (See the report on California for more details.)



Again, prices are supposed to go down when there is competition. This proves that there has been no ‘competition’ that was effective to lower rates, regardless of the hype.

“Harvesting” is when a company wants to get rid of customers and continues to raise rates until the leave or are gouged. The US state utilities have been harvesting customers. Had they wanted to ‘keep the customer’ they would have lowered the rates. This proves that customers have been harvested.

22) Verizon NY Rate Increases, 2006-2017 for “Massive Deployment of Fiber Optics” and Losses

Starting in 2006, Verizon New York was granted multiple rate increases – 84% by 2009 on basic service, as well as increases on all other add-on services.

These increases were based on “massive deployment of fiber optics” and losses. As we discuss in multiple filings with the FCC, the massive deployment was originally for FiOS FTTP, fiber to the home, deployment, but was transferred to the wireless construction in 2010. The losses were artificial and had nothing to do with Local Service.

This is from the NY State Department of Public Service, June 2009.⁷ Notice that the Order specifically states that Verizon needs financial relief, meaning rate increases, because of the losses.

“Verizon’s financial condition is ‘relevant’ when the Commission considers pricing changes because “the state has an interest in a viable companyThere seems to be little question that the company is in need of financial relief; Verizon reported an overall intrastate return of a negative 4.89% in 2006 and its reported intrastate return on common equity was a negative 73.6%.”

⁷ CASE 09-C-0327 – Minor Rate Filing of Verizon New York Inc. to Increase the Monthly Charges for Residence Local Exchange Access Lines (1MR and 1FR) by \$1.95 per month, State Of New York Department Of Public Service , June 18, 2009

“For 2007, Verizon reported an overall intrastate return of negative 6.24% and a return on common equity of negative 46.0%.”

Thus, these losses are directly tied to the price of service—which is not supposed to be the case under ‘price caps’.

Conclusion:

We are requesting that USTelecom withdraw its Petition for Forbearance and then fixes the data provided.

These are all major issues that deserve to be investigated more completely before any additional forbearance is approved.

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